O. GLENN OLIVER

IBLA 82-1293 Decided May 12, 1983

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring Glenco Nos. 1 through 22, N MC 158146 through 158167, mining claims null and void ab initio.

Affirmed.

1. Mining Claims: Lands Subject to -- Segregation -- Withdrawals and Reservations: Effect of

   Where an act of Congress directs segregation of certain lands from "all forms of entry under the public land laws," the question of whether such a segregation prohibits mineral entry under the general mining laws is answered by determining congressional intent from the act itself, the legislative history of the act and, in addition, from historical interpretations of the Department concerning the act or other similar acts.

2. Mining Claims: Lands Subject to -- Words and Phrases

   "Notation rule." Under the notation rule, where land is segregated from mineral entry under the general mining laws and that segregation is noted on the official Bureau of Land Management records, mineral location is foreclosed until the record is changed to reflect that the land is no longer segregated.

3. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land

   A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio.

APPEARANCES: O. Glenn Oliver, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

O. Glenn Oliver has appealed from the August 4, 1982, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring the Glenco Nos. 1 through 22 mining claims located in T. 25 S., R. 63 E., Mount Diablo meridian, null and void ab initio.

The August 4, 1982, decision provided:

> Records of the Nevada State Office, Bureau of Land Management show that the lands listed above, along with other areas, were segregated on April 7, 1958 by a Secretary's Order from all forms of entry under the public land laws of the United States by virtue of the authority and direction contained in section 2 of the Act of March 6, 1958 by Public Law 85-339 (72 Stat 31).
>
> The Order provided for the withdrawal of lands in the El Dorado Valley to the Colorado River Commission of Nevada acting for the State of Nevada. The lands were closed to the location of mining claims at the time the subject claims were located and are still closed as of this date. Location of the claims conferred no rights upon the claimant(s) since they were located subsequent to P.L. 85-339, when the lands were not open to mineral location.

An attachment to the decision described the subject claims as follows:

DATE OF LOCATION	DATE OF FILING	NAME OF CLAIM	N MC NUMBER
May 6, 1980	July 14, 1980	Glenco #1 thru 6	N MC-158146 thru 158151
May 26, 1980	"	Glenco #7 thru 22	N MC-158152 thru 158167

In the statement of reasons for appeal, Oliver alleged that he purchased the Glenco claim Nos. 1 through 6 "prior to filing on them" and that a BLM employee in Las Vegas assured him that all of the land described as T. 25 S., R. 63 E., Mount Diablo meridian, "that was not filed on" was available for mineral location. Oliver further stated that the person from whom he had bought six of the claims had located those claims, "I believe in 1974 or 1975," and that the person had been given serial numbers for them by BLM. However, appellant stated that his predecessor had not filed annual assessment notices or done assessment work and, therefore, appellant "filed on the claims." Oliver contends that since he acted properly in obtaining clearance from BLM before filing the claims, he should be able to maintain them. It is unclear from the statement of reasons whether any of Oliver's references are to the Glenco claim Nos. 7 through 22.

The Act of March 6, 1958, 72 Stat. 31, provided: "The Secretary is hereby authorized and directed to segregate from all forms of entry under the public land laws of the United States, during a period of five years from and

after the effective date of this Act, the following described lands, situated in the State of Nevada * * *." In an order dated April 7, 1958, the Director, BLM, segregated various lands, including those in question, "from all forms of entry under the public land laws." He further stated that the "segregative effect of this order will terminate March 7, 1963 * * *."

Subsequently, by Act of October 10, 1962, 76 Stat. 804, the time period of the Act of March 6, 1958, was extended 5 years to allow more time for selecting lands. On October 10, 1963, the Department published Public Land Order (PLO) No. 3246 extending the segregative effect of the April 7, 1958, order to March 6, 1968. 28 FR 11070.

[1] The lands at issue were segregated from "all forms of entry under the public land laws." The question presented is whether this segregation was effective to foreclose mineral location under the mining laws. We find that it was. The general rule is that the term "public land laws" does not include the mining laws. In Udall v. Tallman, 380 U.S. 1, 19 (1965), the Supreme Court stated:

> [T]he term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public lands for gas and oil.

See Dale E. Armstrong, 53 IBLA 153, 156 (1981). However, in a situation such as that presented in this case, the intent of Congress in using the term "public land laws" must be gathered from the Act itself, the legislative history of the Act or by historical interpretations of the Department concerning the Act or other similar Acts. See Pathfinder Mines Corp., 70 IBLA 264, 272, 89 I.D. 270, 277 (1983). In the Pathfinder case the Board held that land within the Grand Canyon Game Preserve was not open to mineral entry even though the Presidential proclamation establishing that preserve made no mention of whether the preserve was open to mineral entry. The Board's holding was based on its interpretation of the authorizing statute, the legislative history of that statute, and on the Department's construction of other similar statutes.

In the present case, we need look no further than the purpose for the act. The Act of March 6, 1958, was designed to permit the orderly transfer of public lands from the United States to the Colorado River Commission, acting on behalf of the State of Nevada. Section 4(a) of that Act provided that the Commission should, within 3 years of the Act, submit a proposed plan of development to the Secretary for the entire transfer area, and that the plan should include, but not be limited to, "general terms and conditions under which individuals, governmental agencies or subdivisions, corporations, associations or other legal entities may acquire rights, title or interests in and to the land of the transfer." 72 Stat. 32. Clearly, in this instance, the location of mining claims on such lands would be inconsistent with or might materially interfere with the purposes for which the land was segregated. We find that the lands in question were closed to mining location in 1958 by the Act of March 6, 1958.

[2] The next question is whether these lands were open for mineral location at the time appellant made his locations. We conclude that they were not. The basis for this conclusion is the notation rule. That rule is that where the official records of the BLM have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach pursuant to any subsequent entry or application until the record has been changed to reflect that the land is no longer segregated. Paiute Oil and Mining Corp., 67 IBLA 17 (1982). In Carmel J. McIntyre (On Judicial Remand), 67 IBLA 317, 327 (1982), the Board stated:

> The notation rule is grounded, in part, on recognition that, considering the incredible amount of activity concerning the use and possible acquisition of Federal land, it is inevitable that errors will occur in noting the relevant records. Fairness to all members of the public dictates that, where records are improperly noted so as to appear to effectively foreclose the initiation of rights by individuals in a specific tract of land, the Department should treat the land in question as it is noted on the records, until such time as the records are changed to correctly reflect the true status of the land.

See Henrietta Roberts Vaden, 70 IBLA 171, 178 (1983).

Herein, the official records of BLM indicate that the lands in question are segregated by the Act of March 6, 1958. Although PLO 3246 extended the segregative effect only to March 6, 1968, in accordance with the Act of October 10, 1962, and presumably the segregation terminated on that date, 1/ the notation remains on the official records. For that reason, mining location continues to be barred. The notation rule applies even where the segregative use that is noted has terminated or expired, as long as the record continues to reflect it as effective. Paiute Oil and Mining Corp., supra.

[3] Thus, in order to prevail in this case Oliver must establish that he located a mining claim or he is the successor to an interest in a mining claim located on the land before its segregation from mineral entry, as a claim which is located on land which is segregated from mineral location is null and void ab initio. George H. Fennimore, 63 IBLA 214 (1982); Allen L. Brannon, Sr., 53 IBLA 251 (1982). In the present situation, even if some of the mining claims were located in 1974 or 1975 by Oliver's predecessor, from whom Oliver asserts that he bought certain of the mining claims, such a fact would not affect the result in this case, since the land was not open at that time. In addition, appellant could not now be claiming any right through such a prior location which was void. The land has not been available since 1958 and as such the land has been closed to entry on all dates mentioned by Oliver. Accordingly, BLM properly held the mining claims null and void.

1/ Section 3 of the Act of Mar. 6, 1958, provided that an application filed by the Commission with the Secretary prior to the expiration of the period of segregation would have the effect of extending the period of segregation until final disposition of the application by the Secretary. 72 Stat. 32.

Oliver alleges that he was misled by a BLM employee into believing the land was open to location. However, even if that assertion is accurate, reliance on information or an opinion of a BLM employee cannot operate to vest any right not authorized by law. 43 CFR 1810.3; Madison D. Locke, 65 IBLA 122 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge